

Docket No. 0505-1233P
Appl. No. 10/645,612
Reply to Restriction Requirement dated October 19, 2004
Reply to Office Action of October 5, 2004
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REMARKS

Applicants hereby elect Group I consisting of claims 1-15. This election is with traverse.

Claims 1-21 are pending in the present application. The Examiner is respectfully requested to reconsider the Restriction Requirement in view of the following Remarks.

The Examiner has required election in the present application between:

Group I, claims 1-15, drawn to a fuel injection control system, in class 477, subclass 107; and

Group II, claims 16-21, drawn to a fuel injection method, in class 477, subclass 107.

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, claims 1-15.

In order to be responsive to the Examiner's Restriction Requirement, Applicants have elected claims 1-15 for initial examination. However, Applicants submit that the Examiner's Restriction Requirement is improper and should be withdrawn.

In the Examiner's Restriction Requirement, the Examiner states that "the apparatus as claimed can be used to practice another and materially different process, for example, transmitting a driving force from an engine to an output shaft through a transmission, and controlling the driving force of the engine by controlling the fuel injection quantity."

However, the recitation "transmitting a driving force from an engine to an output shaft through a transmission" appears in both independent claims 1 and 16. In view of this, the apparatus as claimed cannot be used to practice another and materially different process, since the process claim 16 requires transmitting a driving force from an engine to an output shaft through a transmission. With regard to the recitation "controlling the driving force of the engine by controlling the fuel injection quantity," this recitation does not appear in independent claim 1 or independent claim 16. In view of this, it is not understood how the Examiner considers this to be the distinction between independent apparatus claim 1 and independent method claim 16.

As stated by the Examiner, in order for a process and apparatus for its practice to be distinct, it must be shown that (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. However, the Examiner has considered that the apparatus as claimed can be used to practice another and materially different process because of two recitations, one of which appears in both claims and the other of which appears in neither of the claims. The Examiner is reminded that distinction can only be shown, for example, if the apparatus "as claimed" can be used to practice another and materially different process. In the present situation, the apparatus claim 1 and the method claim 16 are identical, except that claim 1 requires means for performing each one of the functions and claim 16 requires each step that is accomplished by the means. In view of

this, claims 1-15 and 16-21 are not distinct and therefore the Examiner's Restriction Requirement is improper and should be withdrawn.

In addition, it is respectfully requested that the Examiner reconsider the Restriction Requirement since no serious burden would be presented to the Examiner by examining all of the claims in a single application.

As set forth in § 803 of the MPEP, the Examiner must examine an application on the merits if the examination of the entire application can be made without serious burden. Two criteria are identified for proper requirement for restriction:

1. The inventions must be independent or distinct as claimed; and
2. There must be a serious burden on the Examiner if the restriction is not required.

Applicants respectfully submit that a serious burden has not been placed on the Examiner to consider all of the claims in a single application. The Examiner is respectfully requested to consider all of the claims in the present application and to withdraw the restriction requirement.

In order to be responsive to the Examiner's Restriction Requirement, claims 1-15 have been elected with traverse. If the Examiner does persist in this Restriction Requirement, Applicants reserve the right to file a divisional application directed to the non-elected claims at a later date if it is so desired.

Favorable action on the present application is earnestly solicited.

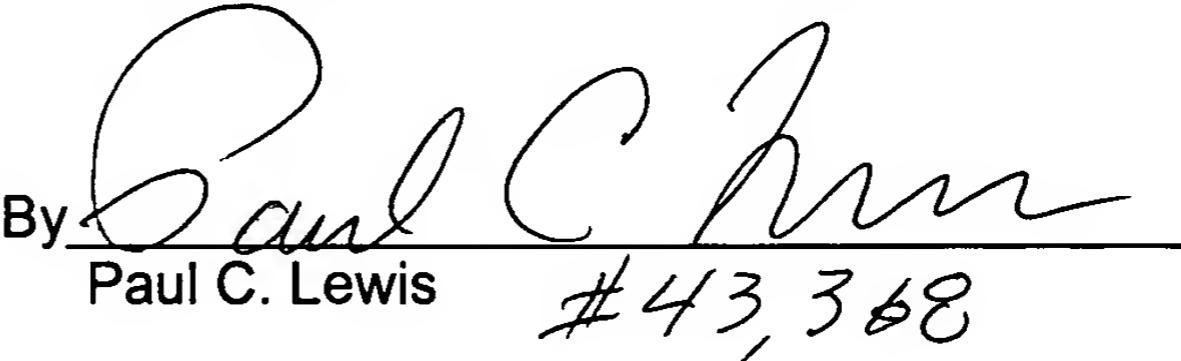
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Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul C. Lewis (Reg. No. 43,368) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By 
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